

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Agape Church, Inc.)	Facility I.D. No. 2784
)	NAL/Acct. No. 0641420025
Licensee of Stations)	FRN: 0001554666
)	
KVTJ(TV), Jonesboro, Arkansas)	Facility I.D. No. 607
KVTN(TV), Pine Bluff, Arkansas)	NAL/Acct. No. 0641420024
KVTH(TV), Hot Springs, Arkansas)	FRN: 0001554666
)	
)	Facility I.D. No. 608
)	NAL/Acct. No. 0641420026
)	FRN: 0001554666

FORFEITURE ORDER

Adopted: April 20, 2010

Released: April 21, 2010

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”) we issue a monetary forfeiture in a total amount of thirty thousand dollars (\$30,000), to Agape Church, Inc. (“Licensee”), licensee of Stations KVTJ(TV), Jonesboro, Arkansas, KVTN(TV), Pine Bluff, Arkansas, and KVTH(TV), Hot Springs, Arkansas (collectively, the “Stations”), for willfully and repeatedly violating Section 73.3526(e)(11)(iii) of the Commission’s Rules (“Rules”),¹ by failing to publicize the existence and location of the Children’s Television Programming Reports for the Stations.

II. BACKGROUND

2. On January 31, 2005, Licensee filed applications to renew the licenses of the Stations (“Applications”). In Exhibit 24 of the Applications, Licensee indicated that due to a misunderstanding it had not been publicizing the existence and location of the Stations’ Children’s Television Programming Reports. Licensee reported that it began complying with this requirement on December 17, 2004.

3. On December 23, 2005, the Bureau issued three Notices of Apparent Liability for Forfeiture (“NAL”) in the amount of ten thousand dollars (\$10,000) each to Licensee for these violations, for a total of \$30,000.² Licensee filed a Response to Notices of Apparent Liability and Request for Cancellation or Reduction of Forfeiture on January 23, 2006 (“Response”). Licensee filed a Supplement to its Response on January 27, 2010 (“Supplement”).

4. In its Response, Licensee argued that cancellation or reduction of the proposed forfeiture

¹ 47 C.F.R. § 73.3526(e)(11)(iii).

² *Agape Church, Inc. (KVTH(TV))*, 20 FCC Rcd 20296 (MB 2005); *Agape Church, Inc. (KVTJ(TV))*, 20 FCC Rcd 20302 (MB 2005); *Agape Church, Inc. (KVTN(TV))*, 20 FCC Rcd 20306 (MB 2005).

is warranted because: (1) it operates on a small budget and is unable to pay the forfeiture amount “without suffering an unduly negative impact on its ability to serve the public”; (2) its Stations have a history of overall compliance with the Rules, it has made a substantial commitment to producing and airing children’s programming, and its “special nonbroadcast efforts are exemplary”; (3) it voluntarily disclosed the violations in its Applications; and (4) the forfeitures exceed the amount assessed against other licensees that have committed the same violations of the Rules.³ Licensee asserted that these reasons warrant a cancellation or reduction of the proposed forfeiture.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and the Commission’s *Forfeiture Policy Statement*.⁶ In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we taken into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁷

6. Licensee argued that the forfeiture amount is inconsistent with those issued for the same violation in other cases. We find the cases cited by Licensee to be inapposite. In *Televicentro*, the Commission issued a \$4,000 forfeiture amount, where the licensee failed to publicize the existence and location of the Children’s Television Programming Reports for approximately five years of its license term. In the *S&E Network* cases, the Commission issued three \$3,000 forfeitures, where the licensee failed to publicize the existence and location of the Children’s Television Programming Reports for three stations for a period of approximately three years. By contrast, Licensee failed to publicize the existence and location of the Children’s Television Programming Reports for three stations throughout their license terms. The \$10,000 forfeitures issued to Licensee are consistent with prior forfeitures for similar violations.⁸

7. Licensee also argued that the Commission should cancel or reduce the proposed forfeiture given its voluntary disclosure its violations. We disagree with the assertion that its disclosure of the violations was voluntary. Although Licensee admitted to violating Section 73.3526(e)(11)(iii), it did so only in the context of the question contained in its license renewal application that compelled such disclosure. Moreover, our decision is consistent with our Rules and *Forfeiture Policy Statement* and

³ In support of its argument, Licensee cites, *Televicentro of Puerto Rico, LLC (WAPA-TV)*, 20 FCC Rcd 20292 (MB 2005) (“*Televicentro*”) (\$4,000 forfeiture proposed for failure to publicize the existence and location of the Children’s Television Programming Reports for approximately five years); *S&E Network Inc. (WJWN-TV)*, 20 FCC Rcd 20277 (MB 2005) (\$3,000 forfeiture proposed for failure to publicize the existence and location of the Children’s Television Programming Reports for approximately three years); *S&E Network Inc. (WJPX(TV))*, 20 FCC Rcd 20282 (MB 2005) (\$3,000 forfeiture proposed for failure to publicize the existence and location of the Children’s Television Programming Reports for approximately three years); *S&E Network Inc. (WKPV(TV))*, 20 FCC Rcd 20287 (MB 2005) (\$3,000 forfeiture proposed for failure to publicize the existence and location of the Children’s Television Programming Reports for approximately three years) (collectively “*S&E Network*”).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ See *Alaska Broadcasting Company, Inc.*, 23 FCC Rcd 11196 (MB 2008) (\$10,000 forfeiture issued for failure to publicize Children’s Television Programming Reports throughout the license term); *Hispanic Broadcasters of Philadelphia, L.L.C.*, 22 FCC Rcd 18843 (MB 2007) (\$10,000 forfeiture issued for failure to publicize Children’s Television Programming Reports throughout the license term).

encourages companies to voluntarily disclose violations and promptly correct violations.⁹

8. Licensee further asserted that its Stations operate on small budgets and do not have sufficient funds to pay the forfeiture without making substantial cuts in service. As such, Licensee claimed that it is financially unable to pay the proposed forfeiture amounts. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the party against which the forfeiture is proposed submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (“GAAP”); or (3) some other reliable and objective documentation that accurately reflect the licensee’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁰

9. In general a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture.¹¹ The Commission has found that the staff’s use of gross revenues is a reasonable and useful yardstick to analyze a company’s financial condition for forfeiture purposes.¹² In support of its request for cancellation or reduction of the forfeiture, Licensee submitted copies of its financial statements. Although we would not normally accept such data, in this case, Licensee attached a declaration to its Supplement indicating that the data contained in the financial statements are reliable, objective and, accurate. Licensee submitted financial statements for the years 2006, 2007, and 2008 with its Supplement.¹³ Based on Licensee’s financial documentation, we do not believe that it has demonstrated that the forfeiture amount is excessive and the Licensee cannot pay it.¹⁴

10. We also reject Licensee’s argument that it deserves a reduction based on its history of compliance with the Rules. Notwithstanding its claimed efforts regarding children’s programming, Licensee, by its own admission, failed to publicize the existence and location of the Children’s Television Programming Reports for Stations KVTN(TV), KVTH(TV), and KVTJ(TV). Based on these combined offenses, we cannot find that Licensee’s history of compliance warrants reduction of the forfeiture amount.¹⁵

⁹ See 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Guidelines for Assessing Forfeitures. See also *Local Phone Services, Inc.*, Order of Forfeiture, 23 FCC Rcd 8952 (2008) (finding that the issuance of a forfeiture despite petitioner’s voluntary disclosure of its Rule violations was appropriate and would not discourage other parties from voluntarily disclosing violations of the Act or Rules).

¹⁰ See *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441 (2004).

¹¹ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) (“*PJB Communications*”).

¹² *Id.*

¹³ Licensee has asked for confidential treatment of all of its financial statements pursuant to 47 C.F.R. §§ 0.457 and 0.459.

¹⁴ The forfeiture amount in this case is well within the range of percentage of violator’s gross revenues in prior cases. See *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues); *Afton Communications Corporation*, Memorandum Opinion and Order, 7 FCC Rcd 6741 (CCB 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator’s gross revenues).

¹⁵ *MFR, Inc.*, Forfeiture Order, 24 FCC Rcd 5688, 5690 (MB 2009) (denial of “history of compliance” reduction when licensee filed several untimely license renewal applications). See also *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532 (EB 2006) (In determining whether a licensee has a history of overall compliance, offenses need not be “prior” to be considered, and for stations having the same owner at the

(continued....)

11. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully¹⁶ and repeatedly¹⁷ violated Section 73.3526(e)(11)(iii) of the Rules, and that no mitigating circumstances warrant cancellation or reduction of the proposed forfeiture amount assessed against KVTJ(TV), KVTN(TV), and KVTH(TV).

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹⁸ that Agape Church, Inc., SHALL FORFEIT to the United States the sum of thirty thousand dollars (\$30,000) for willfully and repeatedly violating Section 73.3526(e)(11)(iii) of the Commission's Rules.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁹ Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

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time of the violations, it is appropriate to consider such violations. Commission can consider violations occurring in cases where there has been no final determination); *Petracom of Texarkana, L.L.C.*, Forfeiture Order, 19 FCC Rcd 8096 (EB 2004) (citing *CCN, Inc., et al.*, Order, 13 FCC Rcd 13599, 13599-600 ¶ 1 (1998); *Hill Country Real Estate Development Corp.*, Forfeiture Order, 18 FCC Rcd 21079, 21080 ¶ 5 (EB 2003); *Rio Grande Transmission, Inc.*, Forfeiture Order, 16 FCC Rcd 17040, 17042-43 ¶ 10 (EB 2001); *Mega Communications of St. Petersburg, Licensee, L.L.C.*, Forfeiture Order, 16 FCC Rcd 15948, 15949 ¶ 6 (EB 2001)).

¹⁶ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that the definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3453 (1992) ("*Southern California*").

¹⁷ Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

¹⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

¹⁹ 47 U.S.C. § 504(a).

14. Licensee's request for full payment of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁰

15. IT IS FURTHER ORDERED that copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to Agape Church Inc., 701 Napa Valley Drive, Little Rock, Arkansas 72211, and to its counsel, Marnie K. Sarver, Esquire, Wiley Rein L.L.P., 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁰ See 47 C.F.R. § 1.1914.